

Product Brief: The U.S. Consumer Product Safety Commission

By: Dana Baiocco and Dwight W. Stone II



Dana Baiocco is Senior Counsel at Clyde & Co. U.S. LLP in Washington and Philadelphia.

Dwight W. Stone II is a principal at Miles & Stockbridge P.C. in Washington and Baltimore.



DOES your client manufacture, import, distribute, or sell a product used in the home, school, or office? If so, chances are that the United States Consumer Product Safety Commission (CPSC or the Commission) has jurisdiction over that product, and there are likely rules and regulations enforced

by the CPSC that apply.¹ Cast your research net wide when determining which ones apply to you.

The CPSC was created in 1972 pursuant to its umbrella statute, the Consumer Product Safety Act (CPSA).² The CPSA designated the CPSC as an independent regulatory

¹ This article is intended to be a basic summary of the Commission and some of the rules and regulations under the CPSC's jurisdiction. It is not intended to be exhaustive.

² 15 U.S.C. §§ 2051, *et. seq.* The current version of the CPSA incorporates amendments made, or relevant provisions enacted by, the Consumer Product Safety Commission Improvements Act of 1976, Pub.

agency and charged it with, *inter alia*, protecting the public against unreasonable risks of injury associated with consumer products.³ A consumer product, as defined in the CPSA, can be “any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.”⁴

As part of its overall charge, the CPSC conducts research, studies, and investigations about product safety. It tests consumer products and develops product safety test methods and devices. The CPSC develops uniform safety standards for consumer products and investigates the causes and prevention of product-related deaths, illnesses, and injuries. The Commission also maintains SaferProducts.gov, a publicly accessible database, which

contains information reported to the CPSC about product safety issues. In 2024, the CPSC introduced its “Business Portal,” described as the “online home for businesses to tell CPSC about hazardous products and to review and comment on consumer product safety reports.”⁵ Among other interactions, this portal provides a place where businesses may report safety concerns anonymously, even about their competitors’ products. These activities and others allow the CPSC to ensure that importers and foreign and domestic manufacturers, distributors, and retailers carry out their obligations and responsibilities under the various Acts that the CPSC enforces.⁶

The CPSC is governed by a commission, acting in an official capacity. The Commission has person members, including a Chairperson, appointed by the President, and confirmed by the Senate for 7-year staggered terms. There may not be more than three members from any one political

L. 94-284, 90 Stat. 503 (May 11, 1976); the Emergency Interim Consumer Product Safety Standard Act of 1978, Pub. L. 95-319, 92 Stat. 386 (July 11, 1978); the Consumer Product Safety Act Authorization Act of 1978, Pub. L. 95-631, 92 Stat. 3742 (Nov. 10, 1978); Pub. L. 96-373, 94 Stat. 1366 (Oct. 3, 1980); the Consumer Product Safety Amendments of 1981, Pub. L. 97-35, Title 12, subtitle A, 95 Stat. 703 (Aug. 13, 1981); the Orphan Drug Act, Pub. L. 97-414, 96 Stat. 2049 (Jan. 4, 1983); the Lead Contamination Control Act of 1988, Pub.

L. 100-572, 102 Stat. 2884 (Oct. 31, 1988); the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4181 (Nov. 18, 1988), and others.

³ CPSA, at § 2051(a).

⁴ 15 U.S.C. § 2052 (a)(5).

⁵ See Consumer Product Safety Commission, *Business & Manufacturing* (available at <https://www.cpsc.gov/Business--Manufacturing>).

⁶ See generally CPSA, 15 U.S.C. § 2051, § 2054 (a)-(d).

party on the Commission.⁷ Consequently, a President from one political party may appoint a commissioner from another political party to satisfy the statutory mandate. Many times, Commissioners sit during different administrations, but traditionally, the Chairperson belongs to the same political party as the sitting President. The Senate Commerce Committee and the House Energy and Commerce Committee have oversight authority over the Commission.

The CPSC is small in size compared to other federal agencies, with approximately 500 employees who sit primarily at the Commission's headquarters in Bethesda, Maryland, or at the Commission's laboratory facility in Rockville, Maryland (a/k/a "5RP"). The CPSC also has field agents across the United States and in China. The CPSC's annual budget in 2024 was \$212.6 million.

In addition to the CPSA and the CPSIA,⁸ which govern a wide range

of products and supply chain issues, including those related to lead paint, phthalates, toy safety, third-party testing and certification, importing, and ATVs,⁹ there are several other acts, rules, and regulations under the CPSC's jurisdiction that may be relevant to a firm involved in the consumer product sector. The following are a few examples that demonstrate the breadth of the Commission's authority in our global consumer product world.

The Federal Hazardous Substances Act (FHSA)¹⁰ regulates certain household products, which are deemed "hazardous" under the FHSA.¹¹ One of the goals of the FHSA is to provide consumers with information so they may safely use and store certain products, which is why you might see warning labels on your household cleaning products or adhesives. The FHSA also authorizes the Commission to regulate or ban hazardous substances to protect the public, which authority the Commission

⁷ 15 U.S.C. § 2053.

⁸ A hazardous substance is "any substance or mixture of substances which is toxic, corrosive, an irritant, a strong sensitizer, is flammable or combustible, or generates pressure through decomposition, heat, or other means" and "may cause substantial personal injury or illness during customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." 15 U.S.C. § 1261(f)(1)(A). See also 16 C.F.R. 1500-1513.

⁹ The CPSA was amended in 2008 by the Consumer Product Safety Improvement Act of 2008 (CPSIA), Pub. L. 110-314, 122 Stat. 3016 (August 14, 2008), which gave the Commission a broader reach with stronger regulatory and enforcement tools, including enhanced civil and criminal penalties. In 2011, the CPSIA was again amended, H.R. 2715, Pub. L. 112-28, 125 Stat. 273 (August 12, 2011), which further expanded the Commission's authority and discretion in its enforcement activities.

¹⁰ 15 U.S.C. §§ 1261, *et. seq.*

¹¹ 15 U.S.C. § 1261(f)(1)(A).

used to ban general use clothing items containing asbestos fibers. The CPSC also regulates electrically operated toys, cribs, rattles, pacifiers, bicycles, and bunk beds under the FHSA, and even art supplies under the FHSA's Labeling of Hazardous Art Materials Act (LHAMA) amendment, which incorporates the ASTM Standard Practice for Labeling Ceramic Art Materials for Chronic Adverse Health Hazards. The Child Safety Protection Act (CSPA)¹² further expanded the FHSA amendment to require warning labels on products with choking hazards and to require manufacturers, importers, distributors, and retailers to report to the CPSC certain choking incidents immediately upon learning of an incident.

Child-protective packaging also falls within the CPSC's purview, even if the product contained within the packaging is controlled by another federal agency. The Poison Prevention Packaging Act (PPPA)¹³ expressly requires that child-resistant packaging be used for certain household substances, including anything "hazardous" under the FHSA, food, drugs or cosmetics under Section 201 of Federal Food, Drug, and Cosmetic Act, dietary supplements, and fuel when stored in portable containers

used in heating, cooking, or refrigeration of a house. Similarly, the Child Nicotine Poison Prevention Act of 2015 (CNPPA), enforced by the CPSC, requires "special packaging" (as defined in PPPA) for liquid nicotine sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States, even though the FDA has jurisdiction over the liquid contents.¹⁴

Another mandate that deals with child-protective packaging, the Children's Gasoline Burn Prevention Act (CGBPA)¹⁵ requires that portable gas containers manufactured for sale in United States after 2009 conform to child resistant packaging requirements. The Portable Fuel Container Act of 2020 further mandates that flame mitigation devices be incorporated into portable fuel containers to impede the propagation of flame into the container.¹⁶

There are countless products currently used in homes, schools, and offices every day that are powered by small batteries. Remote controls, watches, calculators, toys, bathroom scales, digital clocks, even musical greeting cards are just a few examples of common products that contain small batteries. As of 2022, the CPSC implemented specific rules

¹² Pub. L. 103-267, 108 Stat. 722 (June 16, 1994).

¹³ 15 U.S.C. §§ 1471-1477.

¹⁴ See 16 C.F.R. 1700.15, 1700.20.

¹⁵ Pub. L. 110-278, 122 Stat. 262 (July 17, 2008).

¹⁶ 15 U.S.C. § 2056d.

for products that contain button or coin cell batteries - and the batteries themselves - under Reese's Law [H.R. 5323].¹⁷ This law was enacted to address the risk of injury from battery ingestion by children ages six and younger and requires a long list of mandated precautions, including warning labels on the product and packaging, as well as rules for securing battery containment compartments.

In a somewhat controversial move just a few years ago, the CPSC banned several popular infant products, including crib bumpers and inclined sleep products. The CPSC's Infant Sleep Rule and the Safe Sleep for Babies Act of 2021 together prohibit the sale, offer for sale, manufacture, distribution, and/or importation into the United States of padded crib bumpers and inclined infant sleep products (with an incline of 10 degrees or more). This ban also sweeps in non-inclined or flat, infant sleep products, such as baby boxes, in-bed sleepers, baby nests and pods, rigid-sided and rigid-framed compact bassinets without a stand or legs, various designs of travel bassinets with soft padded or mesh sides, and baby tents. While the CPSC has not banned infant nursing pillows or "lounging pads," the Commission (and certain

individual Commissioners) caution that any pillow-like infant products are not designed or safe for sleep.

The rules, regulations, and statutes under the CPSC's jurisdiction appear to be endless. There are prescriptions and proscriptions for fabrics, furniture, appliances, fireworks, lighters, building products, and even swimming pools. Standards for clothing, textiles, vinyl plastic film used in clothes, carpets/rugs, children's sleepwear, mattresses/pads are dictated by the Flammable Fabrics Act (FFA).¹⁸ Anti-entrapment swimming pool equipment is required by the Virginia Graeme Baker Pool and Spa Safety Act (VGB Act).¹⁹ Drywall manufactured and imported for use in the United States must comply with certain sulfur limitations and display appropriate warnings and labeling under the Dry Wall Safety Act of 2012 (DSA).²⁰

The CPSC also regulates or has studied and/or issued reports addressing sports and recreation, chemicals, home décor, elevators, home maintenance products, table saws, solar panels, adult bed rails, public facilities, non-pool submersions, technology, artificial intelligence, IOT products, 3D printers, wearable technologies, e-bikes and scooters, human

¹⁷ (August 16, 2022).

¹⁸ 15 U.S.C. §§ 1191-1204.

¹⁹ Pub. L. 110-140, title XIV (with amendments) (Dec. 19, 2007).

²⁰ Pub. L. 112-266, 126 Stat. 2437 (Jan. 14, 2013).

biomonitoring, and just about any children's product you can think of. Indeed, the CPSC has even flexed its muscles in areas where Congress did not specifically direct. A plain reading of the CPSA reveals that certain goods were preserved for other federal agencies, including tobacco and tobacco products (FDA), motor vehicles or motor vehicle equipment (NHTSA), pesticides, chemicals, and emissions (EPA), firearms and ammunition (ATF), aircraft and its components (FAA), boats and equipment (U.S. Coast Guard), food, drugs, medical devices, or cosmetics (FDA). Nevertheless, the CPSC has stepped into these areas, exercising jurisdiction over portable generators, particularly with regard to carbon monoxide emissions, and gun safes and locks.

The CPSC is not the only federal agency to wade into waters arguably beyond its mandate. Like other agencies, the CPSC presumably found strength in the *Chevron* doctrine, which gave considerable authority, or deference, to administrative agencies. Section 15(b) of the CPSA and the CPSC's interpretations thereof provide several illustrations of this point.²¹

²¹ 15 U.S.C. § 2064(b). In enacting Section 15(b), Congress intended to encourage widespread reporting of timely, accurate, and complete information that is necessary to protect public health and safety. In addition to assisting the CPSC to uncover substantial product hazards, reporting incidents involving injury or death helps the Commission identify risks that could be

Section 15(b) requires manufacturers, distributors, and retailers of consumer products, distributed in commerce, and over which the Commission has jurisdiction to immediately inform the Commission if it obtains information which that reasonably supports the conclusion that a product: (1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under (found in 15 U.S.C. § 2058); or (2) fails to comply with any rule, regulation, standard or ban under the CPSA or any other act enforced by the Commission; or (3) contains a defect that could create a substantial product hazard; or (4) creates an unreasonable risk of injury or death.²² This reporting obligation is relieved where an entity has actual knowledge that the Commission has already been adequately informed.²³ That seems straight forward enough. Or not.

The Commission issued an interpretive regulation regarding

addressed through voluntary or mandatory standards. Although the CPSC uses sources other than Section 15(b) reports to identify potentially hazardous products, reporting by companies under Section 15 can provide the most timely and effective source of information about such products.

²² 15 U.S.C. § 2064(b) (1)-(4).

²³ *Id.*

Section 15(b)'s requirements.²⁴ One might question, however, whether the Commission's interpretations merely clarify the statutory provisions or expand them beyond what Congress intended. For example, in Part 1115.2, the Commission arguably expanded Section 15(b)'s reporting obligations to importers, even though the statutory language makes no mention of importers. Part 1115.2 provides: "Section 15(b) of the CPSA requires every manufacturer (including an importer), distributor, and retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that the product fails to comply with an applicable consumer product safety rule, fails to comply with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA..."²⁵

The Commission seems to have empowered itself to order a manufacturer (*including an*

importer), distributor, or retailer under Sections 15 (c) and (d) of the CPSA, to issue various forms of notice to the public of a defect and to order the same to elect either to repair, to replace, or to refund the purchase price of such product.²⁶ In the same way, the Commission may, by its interpretation, extend Section 15(b) and the provisions of the FFA, FHSA and PPPA to cover imports.²⁷

In Part 1115.12(f), the Commission interpreted the term "information" as used in Section 15(b) to include the study and evaluation of (1) information about engineering, quality control, or production data; (2) information about safety-related production or design change(s); (3) product liability suits and/or claims for personal injury or damage; (4) information from an independent testing laboratory; (5) complaints from a consumer or consumer group; (6) information received from the Commission or other governmental agency; (7) information received from other firms, including requests to return a

²⁴ 16 C.F.R. Part 1115.

²⁵ 16 C.F.R. 1115.2 (b).

²⁶ See 16 C.F.R. 1115.2 (b).

²⁷ See 16 C.F.R. 1115.2(d) ("The provisions of this part 1115 deal with all consumer products (including imports)..."); *id.* ("Therefore, pursuant to Section 30(d) of the CPSA (15 U.S.C. 2079(d)), manufacturers (including importers), distributors, and retailers of consumer products which are subject to regulation under provisions of the FFA, FHSA, and PPPA must comply with the reporting requirements of section 15(b)"); *see also* 16 C.F.R. 1115.10 (a)-(f) (persons who must report include importers).

product or for replacement or credit. This includes both requests made by distributors and retailers to the manufacturer and requests from the manufacturer that products be returned. In its statutory context, however, the term “information” does not seem to impose such an affirmative onus on a manufacturer, distributor or retailer (or importer for that matter).

In Part 111.13, the Commission instructs that Section 15(b)’s reporting obligation must be submitted in writing, as signed and delegated by the CEO: “The chief executive officer of the subject firm should sign any written reports to the Commission under section 15(b) of the CPSA unless this responsibility has been delegated by filing a written delegation of authority with the Commission’s Office of Compliance and Enforcement, Division of Corrective Actions...”. But that demand does not appear in the statute.

Finally, the term “immediately” as used in the statute has been interpreted by the Commission to mean within 24 hours.²⁸ The CPSC’s interpretative guidelines, however, also provide for a number of

different timing calculations beyond this 24-hour period.²⁹

The question raised by these types of interpretative guidelines is whether they go beyond the statutory authority granted by Congress and whether deference to interpretations like these will survive challenge in light of the Supreme Court’s recent decision in *Loper Bright Enterprises, v. Raimondo*.³⁰ Before *Loper*, courts reviewing such a challenge gave varying degrees of deference to the Commission’s interpretation of its own statutes under the *Chevron* doctrine. In its simplest form, the *Chevron* doctrine was based on the presumption that a federal agency has special subject matter expertise in resolving ambiguities in the statutes they administer. Proponents of the doctrine argued that deferring to the agencies promoted a uniform application of law and invested policy making in the appropriate political actors. Opponents argued that Congress did not intend to remove from the courts and delegate to federal agencies the authority to resolve interpretative questions regarding ambiguities in the agency statutes. The Supreme Court flatly overruled

²⁸ See 16 C.F.R. 1115.14(e) (“Immediately, that is, within 24 hours, after a subject firm has obtained information...”).

²⁹ See, for example, 16 C.F.R. 1115.14(c) (may spend a reasonable time for investigation and evaluation); and 1115.14(d) (investigation and evaluation should not exceed 10 days unless a firm can demonstrate that a longer period is reasonable).

³⁰ 603 U.S. __ (2024).

Chevron, holding that courts may no longer defer to an agency interpretation simply because a statute is ambiguous, but instead must exercise independent judgment in deciding whether an agency has acted within its statutory authority.³¹

It will be interesting to see whether any of the CPSC's long standing—or even recent—actions will be challenged following the *Loper* decision. Some believe that challenging a federal agency's authority is too

risky. Perhaps the Supreme Court has relaxed that risk with this decision and opened a pathway for disgruntled entities to seek relief. Whether federal agencies, like the CPSC, will revisit past actions or change their procedures going forward is yet to be seen. The 2025 Operating Plan may foreshadow the Commission's plans in this regard. In the meantime, for those in the consumer product sector, do not discount this small agency's reach.

³¹ See *id.*, Slip Op. at 35 (June 28, 2024).